

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

JESSE OLIVAR,

Plaintiff, CIV S-03-0891 GGH PS

vs.

JOHN E. POTTER,

Defendant. ORDER

On August 28 and 29, 2006, plaintiff filed requests for a settlement conference. Unless and until defendant expresses interest in participating in a settlement conference, one will not be scheduled.

Plaintiff has also requested appointment of counsel. Any successful application for appointment of counsel must comply with criteria set forth in Bradshaw v. Zoological Society of San Diego, 662 F.2d 1301 (9th Cir. 1981). Before appointing counsel to plaintiff, the Ninth Circuit's decision in Bradshaw requires the court to consider (1) plaintiff's financial resources, (2) the efforts already made by plaintiff to secure counsel, and (3) plaintiff's likelihood of success on the merits. Id. at 1318. Appointment of counsel is not a matter of right. See Ivey v. Board of Regents, 673 F. 2d 266 (9th Cir. 1982).

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Because plaintiff is proceeding in forma pauperis, the first factor, which relates to his financial condition, is a fortiori resolved in his favor. Nevertheless, plaintiff has given no indication of his efforts to secure counsel on his own, and the court cannot determine that plaintiff is likely to succeed on the merits. Therefore, his request for appointment of counsel is denied.

Also before the court is defendant's motion for summary judgment, filed August 16, 2005. Due to the pendency of that motion, the pretrial conference and trial will be vacated until further order.

Accordingly, IT IS ORDERED that:

1. Plaintiff's August 28 and 29, 2006 requests for a settlement conference are denied.

2. Plaintiff's August 29, 2006 request for appointment of counsel is denied.

3. The pretrial conference scheduled for October 30, 2006, and jury trial

scheduled for November 27, 2006, are vacated pending a ruling on defendant's summary judgment motion.

DATED: 10/5/06

/s/ Gregory G. Hollows

GREGORY G. HOLLOW  
U. S. MAGISTRATE JUDGE

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